

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 553 Regulation of Health Care Entities
SPONSOR(S): H. Gibson
TIED BILLS: **IDEN./SIM. BILLS:** SB 664

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families		Meyer	Liem
2) Health Care			
3) Finance & Tax			
4) Health Appropriations (Sub)			
5) Appropriations			

SUMMARY ANALYSIS

House Bill 553 revises Part IV of chapter 400, F.S., which governs the regulation of businesses that provide home health care and creates a new licensure category called "Personal Care Organizations" (PCO). A personal care organization is defined as a business licensed to provide personal care, homemaker, and companion services by employed caregivers. The current requirement for registration of homemaker or companion services by the Agency for Health Care Administration (AHCA) is repealed. Entities that provide only those services would no longer be required to register with AHCA.

The bill also eliminates the statutorily-mandated monthly visits from a registered nurse to patients receiving home health aide or certified nursing assistant (CNA) services from nurse registries. The bill allows advanced registered nurse practitioners (ARNPs) and physician assistants (PAs) to give orders for skilled care (currently permitted in other health care settings) and removes the requirement that medical orders be signed within 30 days. The bill increases the penalties for operating an unlicensed home health agency or nurse registry and creates a penalty for PCOs operating without a license. The bill increases the licensure for Nurse Registries to \$1500 and adds a \$400 survey fee for a two year license, and it modifies the licensure requirement for home health agencies (HHA) to a \$1,000 fee for a two year period. The newly created PCO must pay a yearly licensure fee not to exceed \$650. The bill removes the current exemption from licensure fees for state, county, and municipal governments. The bill also doubles the amount of malpractice insurance coverage required for home health agencies from \$250,000 to \$500,000.

This bill regulates a new profession or occupation and seems to be subject to the requirement of section 11.62, F.S., for what is known as a Sunshine Review. That review has not been completed for this proposed legislation.

AHCA projects a fiscal impact to the agency of \$ 582,775 in General Revenue for the fiscal year 2004-2005 and of \$676,247 for the 2005-2006 year.

The bill takes effect October 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0553.fff.doc
DATE: March 19, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill reduces government by removing the requirement county health departments review and approve all emergency plans for home health agencies and personal care organizations. The bill removes the requirement for a business offering only homemaker, companion, and sitter services to register with AHCA.

The bill creates a new requirement for licensure of non-skilled personal care services delivered in a person’s home; this increases government. The bill requires a new licensure fee and a fee to cover the costs of surveys by the Agency for Health Care Administration.

B. EFFECT OF PROPOSED CHANGES:

The bill removes the requirement that businesses that provide only homemaker, sitter, or companion services register with the Agency for Health Care Administration. Any entities that wish to offer only those services will not be subject to any oversight or regulation.

The bill creates a new regulatory arrangement for businesses that provide homemaker, companion, sitter, and personal care services and provides for a licensure fee of up to \$650. The bill enhances the penalties for violating statute or rule and provides rule making authority to AHCA and the Department of Elder Affairs. It increases the licensure period from one to two years for Home Health Agencies (HHA) and Nurse Registries and revises the licensure fees and administrative fines.

Licensure & Regulation of Home Care Services

The bill provides that a CNA can work in a personal care organization, clarifies that a sitter or companion is someone who “spends time with” as opposed to “cares for” an elderly or disabled person. The definition of “organization” is amended to include a group that includes more than one home health aide or CNA or an HHA and a CNA. The bill removes the requirement that persons who receive unskilled (personal) care from a CNA or home health aide who is under contract with a nurse registry receive a supervisory visit from a Registered Nurse every month.

Personal Care

Personal care is defined subsection 400.462(18), F.S., as “assistance to a patient in the activities of daily living such as dressing, bathing, eating, or personal hygiene, and assistance in physical transfer, ambulation, and in administering medications as permitted by rule.”

Personal care may be provided only by businesses that are licensed as home health agencies or nurse registries with the exception of:

- home health services provided by a state agency either directly or through a contract with the Department of Elder Affairs;

- the Department of Health, a community health center, or rural health network that furnishes home visits for case management, environment assessments, and other delineated purposes;
- services provided to persons with developmental disabilities;
- companion and sitter service businesses that were registered under 400.509(1), F.S., on January 1, 1999 may continue to provide services;
- the Department of Children and Family Services;
- an individual who acts alone and is not employed by or affiliated with HHA or nurse registry.

In 1999, the Task Force on Home Health Services Licensure Provisions reviewed how other state's regulate home care and found that 11 other states offer a "simpler" form of licensure for personal care services than what is available in Florida for either a home health agency license or a nurse registry license. According to AHCA, "The Task Force recommended to the Legislature that personal care be added to homemaker and companion services."

Home Health Agencies General Provisions

The bill amends s. 400.462, F.S., to define "direct employee" for purposes of a home health agency, creates a definition of a "personal care organization," and adds the definitions for Advanced Registered Nurse Practitioner and Physician's Assistant by cross-referencing their Practice Acts. The bill removes the requirement that the Director of Nursing (DON) of an HHA designate a qualified registered nurse who can serve when the DON is absent.

Home Health Agencies

Licensure

The bill extends the licensure period for an HHA from one year to two years. The bill deletes the current exemption for state, municipal, and county governments that apply for a license. The bill deletes the requirement that the application for an HHA license include information related to services that will be provided directly or through contracts and removes the requirement that the number and disciplines of employees be listed. AHCA reports that not having this information available will hinder their ability to complete a thorough financial review of the applicant's licensure request because the required financial statements are based upon the number of and specialty disciplines of the employed or contracted staff. Language is added to require HHAs to complete questions about the volume of services that they provide. This information is sought by industry representatives, researchers, and the general public; however, AHCA is concerned that this will add costs and is not an activity essential to the agency's mission.

The bill requires that all documents demonstrating the applicant's financial ability to operate must be *compiled by*, rather than *signed by*, a certified public accountant. Timeframes for the application process are changed to require submission of a renewal application 60 days, rather than 90 days, before the expiration date and to require AHCA to send a notice of renewal at least 70 days before the expiration date.

Insurance

The bill removes the requirement for liability insurance and doubles the amount of medical malpractice insurance required from \$250,000 to \$500,000.

Plans of Care

A physician's assistant or an advanced registered nurse practitioner may establish and sign treatment orders for skilled services. The bill deletes the requirement that the treatment orders must be signed by the physician within 30 days of the start of care. The requirement that a registered nurse must perform

a supervisory visit to the home of a patient receiving home health aide services is amended to require that the visit be conducted in accordance with the patient's agreement to pay the charge for the visit.

Accreditation in Lieu of AHCA Survey

The agency may accept the survey of an accrediting organization in lieu of its own periodic licensure survey, if the license is not provisional and if the agency obtains a copy of the survey report.

Fines, Fees, and Payments

The bill provides that HHAs are licensed for two years instead of one year and authorizes AHCA to levy an administrative fine of \$50 per day up to a maximum amount of \$500 for a late-filed application from a home health agency. The bill requires an application fee for HHAs not to exceed \$1,000. The bill authorizes a survey fee of \$400.

The bill declares that operating an unlicensed home health agency is "inimical to public health, welfare, and safety" and authorizes the agency to act to stop such operation. The amended language also provides that a person who owns, operates, or maintains an unlicensed HHA and does not cease operation within 10 days after receiving a notice from AHCA commits a felony of the third degree and may be fined \$500 for each day of operation after the agency notification. The bill removes an exemption from licensure fees for state, county, and municipal governments.

The bill specifies that payment sources for home health care include Medicaid, Medicare, private insurance, personal funds, or a combination thereof.

Patient Protection

An HHA that fails to include its license number in advertisements commits a felony, revised from a misdemeanor in current law.

An HHA that ceases its business operation must notify each patient, whose clinical records it has in its possession that it is ceasing operations and give each patient 15 calendar days to retrieve his or her clinical record at a specified location within 2 hours' driving time of the patient's residence and, at a minimum, between the hours of 10 a.m. and 3 p.m., Monday through Friday.

The bill requires that patient information be disclosed only as authorized under the provisions of 45 C.F.R. ss. 160.102, 160.103, and 164, subpart A, the federal Health Information Portability and Accountability Act (HIPAA), except that clinical records regarding HIV testing, sexually transmissible diseases, cholesterol health risks, cancer, tuberculosis, mental health, trauma, substance abuse, and genetic testing described in ss. 381.004, 384.29, 385.202, 392.65, 394.4615, 395.404, 397.501, and 760.40, F.S., respectively, must be disclosed as authorized in those sections.

Nurse Registries

A nurse registry is a business that receives requests from consumers for registered nurses, licensed practical nurses, home health aides, certified nursing assistants (CNAs), homemakers, and companions and makes those personnel through a contract with the needed worker. These personnel associated with nurse registries are considered independent contractors and provide in-home services, private duty care in facilities, and temporary staffing services for facilities.

AHCA reports that there are 178 nurse registries licensed as of January 2004. That represents an almost 164% increase since 2000 when there were 65 licensed. Under current law, a registered nurse must visit each patient who receives care from a CNA or a home health aide to assess the quality of care being provided. This requirement does not apply to home health agencies.

Licensure

The bill increases the licensure fee for nurse registries to a maximum of \$1,500 and adds a survey fee not to exceed \$400. Nurse registry licenses have been extended from one to two years. The fine for not including the nurse registry license number in any advertising has been increased so that the fine for second and subsequent offenses is \$500.

The penalties for unlicensed nurse registries are specified and are the same as those described the bill for home health agencies. Businesses operating an unlicensed nurse registry are given 10 days to cease operation and to apply for a license after notification from AHCA. Businesses may also be fined \$500 per day for failure to cease operation after notification by AHCA.

The bill requires that a nurse provided by a nurse registry to report to the patient (no longer the physician) any condition that in his or her judgment requires medical attention. The requirement that notification be sent to the physician within 48 hours after completing the contract for care has been removed. Required monthly supervisory visits by an RN to nurse registry patients receiving non-skilled services from a certified nursing assistant or a home health aide are deleted. Language incorporating physician assistants and advanced registered nurse practitioners writing treatment orders has been added to this section, as was done for home health agencies in section 5 of the bill.

Personal Care Organizations (PCOs)

The bill creates a new entity to be licensed by AHCA that can provide homemaker, companion, sitter, and personal care services in a person's home.

Licensure

Each operational site of a PCO must be licensed, unless there is more than one site in a county. Level 2 background screening in accordance with chapter 435, F.S., of the managing employee and financial officer, or similarly titled individuals, is required for personal care organizations as is required for homemaker and companion agencies. Other applicants may be screened if AHCA has reason to believe that the person has been convicted of an offense prohibited under Level 2 standards in chapter 435, F.S. Applicants must submit information on any prior offenses as well as exclusions from the Medicare or Medicaid programs. AHCA may grant a provisional license after the FDLE background information received and the FBI results are pending. The reasons for denial or revocation of a license are specified and are the same as those currently in statutes for the homemaker and companion registration; except that falsely representing a material fact pertains to all material facts in the application, not just Level 2 offenses and exclusions from Medicare and Medicaid.

Unlicensed Practice of Personal Care

PCOs that provide services without a license may be subject to an injunction. Unlicensed activity is declared "a nuisance, inimical to the public health, welfare, and safety, and is a violation of the Florida Deceptive and Unfair Trade Practices Act." Businesses are given 10 days to cease operation and apply for a license after notification from AHCA. It is a felony of the third degree for businesses not to apply for a license. Businesses may also be fined \$500 per day for failure to cease operation after notification by AHCA.

The bill authorizes AHCA to seek an injunction to stop the continued operation of any home health agency, nurse registry, or personal care organization that is operating without a license or that violates any provision of this part or related rules. The bill also allows the state attorney to bring an action for injunction or to restrain a violation of this part or with the rules of the agency until the agency deems the business to be in compliance. The current statutes limit injunctions to emergencies affecting the immediate health and safety of a patient.

Regulation by AHCA

The Agency for Health Care Administration is given authority to make inspections and investigations to respond to complaints and determine compliance with state law and rules. The Agency for Health Care Administration is to make a report to law enforcement if there is reason to believe a crime has been committed and must also report abuse, neglect, and exploitation as required in chapter 415, F.S.

Personal care services are to be provided by trained home health aides and certified nursing assistants. Supervisory visits by a registered nurse may be made if approved by the patient and the patient agrees to pay for the visits. All staff must provide documentation to the personal care organization of their education and employment history. These files are open to inspection by AHCA. The names and addresses of persons receiving personal care services must also be maintained. All files must be kept for a minimum of three years after the date of the last file entry of information concerning a patient.

The license number must appear in any advertising or a fine is assessed: the first offense is \$100 and any subsequent offense is \$500. The penalties for unlicensed activity are specified and are the same as those described in Sections 3 and 10 of the bill for home health agencies and nurse registries.

Alzheimer's' Training Requirements

The bill establishes for PCOs the same training requirements on Alzheimer's disease and dementia-related disorders adopted by the 2002 Legislature for home health agency personnel. A PCO must provide information to all employees on interacting with patients with Alzheimer's disease and related disorders. Staff providing direct care must complete 2 hours of training within 9 months of employment. Employees hired after July 1, 2005, must complete the training. The Department of Elderly Affairs must approve the training and is to adopt rules for the standards of the training and trainers as they have already done for other health facilities. Personal care organizations whose patient census is comprised of at least 90 percent of individuals less than 21 years of age are exempt from this requirement.

The requirements in s. 400.4785, F.S., for disclosure by agencies that advertise that they provide "special care" for persons who have Alzheimer's disease and related disorders are applied to PCOs. PCOs that advertise providing such special care must disclose in their advertising, or in a separate document, those services that distinguish the care as being especially applicable for patients with dementia. The Agency for Health Care Administration is required to examine such advertisements and documents as part of the license renewal process.

Emergency Management for PCOs

The emergency management requirements in s. 400.492, F.S., for home health agencies are extended to PCOs. Each PCO must assist persons who would need evacuation and shelter in registering with the appropriate local emergency management agency as required for all community agencies in s. 252.355, F.S. The PCO must also prepare a comprehensive emergency management plan according to requirements in this section and update it annually. Patient records must include a description of how care will be continued during an emergency. The PCO must provide a prioritized list of patients who are registered with local emergency management agencies. A list of each registered patient's medication and equipment needs must be available to the county health departments and local emergency management agencies. A home health aide or certified nursing assistant is not required to continue to provide care in emergency situations that make it impossible to provide care. The Agency for Health Care Administration must work with the Department of Health and the Department of Community Affairs to adopt rules establishing minimum criteria for emergency management plans as they have done for home health agencies.

The Agency for Health Care Administration is permitted to assess costs for investigation of complaints that result in a successful prosecution, excluding costs associated with an attorney's time. This provision is currently in the statutes related to homemakers and companions, nurse registries, and home health agencies.

C. SECTION DIRECTORY:

Section 1: Amends ss. (2) of 400.461 F.S., to add nurse registries and personal care organizations to the list of health-providing entities subject to this section.

Section 2. Amends s. 400.462 F.S., definitions related to home health.

Section 3. Amends paragraphs (1), (4), and (5) of s. 400.464, F.S., related to advertising by HHAs.

Section 4. Amends s. 400.471, F.S., to modify the information an applicant for an HHA license must file with AHCA, fines and penalties and required malpractice insurance.

Section 5. Amends s. 400.487, F.S., to specify sources of payment for home health services and revise requirements related to medical orders.

Section 6. Amends s. 400.491, F.S., to require a licensed home health agency that ceases to remain in business to make its clinical records available to former patients in a timely manner and a place reasonably accessible to them.

Section 7. Amends s. 400.494, F.S., related to the privacy of patient information that is held by an HHA or received by the licensing agency.

Section 8. Amends s. 400.495, F.S., to add "personal care organization" to the list of providers who must inform a person receiving home health services of the toll-free number for the central abuse hot line.

Section 9. Amends s. 400.497, F.S., to grant AHCA rulemaking authority for s. 400.5095, F.S., (related to Personal Care Organizations) which is created in this bill. It also removes the requirement that these emergency plans be reviewed and approved by the county health department.

Section 10. Amends s. 400.506, F.S., related to licensure fees and fines.

Section 11. Creates section 400.5065, F.S., "Personal Care Organizations."

Section 12. Amends s. 400.512, F.S., relating to the background screening of personnel to replace references to homemakers and companions with references to personal care organization personnel.

Section 13. Amends s. 400.515, F.S., related to injunction proceedings.

Section 14. Corrects a cross-reference.

Section 15. Repeals section 400.509, F.S., related to the registration of sitters, homemakers, and companion services.

Section 16. This act takes effect October 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Regulation of health related facilities is based on fees. The agency is given authority to set a fee sufficient to meet the costs associated with the licensure and survey process for this new type of business.

	2004-2005	2005-2006
Estimated revenue:	\$717,250	\$798,925

2. Expenditures:

AHCA estimates the following:

Non-recurring expenses		\$66,877
Non-recurring OCO		\$23,220
Total non-recurring:		\$90,097

Total recurring	\$1,209,928	\$1,475,172
This includes 24 FTEs		

Total Projected Revenues minus Total Expenditures:

Recurring Expenses	\$1,209,928	\$1,475,172
Revenues	\$717,250	\$798,925
	-\$582,775*	-\$676,247

** this includes the non-recurring expenses for year 1*

These costs include the following assumptions and projections from AHCA:

- 90% of the existing homemaker, companion services will apply for the new PCO license.
- 310 of the 1,176 existing HHAs will convert to a PCO license.
- A 10% per year growth in the number of PCOs seeking licensure.
- AHCA will phase-in the program and grant temporary licenses to PCOs based on approved applications until inspections are completed.
- 24 additional FTEs:
 - 13 staff in field offices
 - A Health Services & Facilities Consultant
 - A Senior Human Services Program Specialist
 - A Senior Clerk for headquarters program office
 - An Accountant I
 - 4 Senior Attorneys
 - Two Administrative Assistants
 - Additional OPS resources to support the Agency Clerk.
- Of 1,652 newly required surveys, 165 will result in the filing of an administrative case by the agency.
- Two-thirds of those cases will result in petitions for formal or informal hearings, and 50% of those cases will actually result in an administrative hearing.
- Attorneys and Registered Nurses cannot be hired for less than 10 percent above the minimum salary for the class.

The bill also adds a new requirement that the agency notify home health agencies 70 days in advance of the date of their required licensure renewal. The agency reports that it discontinued this "courtesy" in January 2003 as a cost savings measure. Currently, administrative rule states that it is the responsibility of the home health agency to submit a renewal application on time.

AHCA estimates \$550 per year in postage for this provision and did not project a cost in staff time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None is projected.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The availability of a lower cost alternative to a home health or nurse registry license may increase the number of businesses willing and able to offer personal care services.

D. FISCAL COMMENTS:

The proponents of this legislation have described it as providing more consumer choice, consumer protection from unlicensed personal care providers, and costs will not increase because of its passage. However, if, as AHCA has said in their analysis, the Medicaid home and community-based waivers can no longer use alternative provider qualifications for personal care providers, it is possible that the cost for those services will increase.

AHCA's analysis of the bill is that the fees for nurse registries and home health agencies are not sufficient to cover the agency's costs of regulation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. However, the bill does remove the exemption from licensure fees for state, county, and municipal governments.

2. Other:

Because this bill seeks to license and regulate a new group, it would seem to require the Sunrise Review prescribed in section 11.062, F.S. That review has not been completed for this bill.

Other states, Oregon particularly, has been moving toward less regulation of home care services and have revised their Nurse Practice Acts to make home care services more available and less costly. To the extent that this legislation increases regulation of the entities from which a consumer may purchase homemaker, companion, or sitter services, the state may be setting in motion unintended consequences which could increase costs and therefore adversely affect the state's continuing policy preference to reduce institutional care, increase community-based care, and reduce government

intervention that reduces families capacity (or power) to choose for themselves. The Medicaid home and community-based waivers have used alternative standards for providers of personal care services. This bill may make that impossible. These changes would require waiver amendments and could increase costs.

Current law exempts from home health licensure companion and sitter organizations that are registered under section 400.509(1) and are authorized under the Developmental Services Program to provide personal care to persons with developmental disabilities and continue to be exempted from the requirements of licensure as a PCO or home health agency or Nurse Registry.

Businesses that only wish to offer sitter, companion, or homemaker services would appear to be unregulated under the provisions of the bill.

B. RULE-MAKING AUTHORITY:

The Agency for Health Care Administration is granted rule making authority and authority to set licensure fees. The Department of Elder Affairs is granted rule making authority related to Alzheimer's training requirements for personnel.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill allows a home health agency to substitute accreditation from an accrediting organization in lieu of survey and inspection by AHCA. However, the bill does not specify the accrediting organization and does not provide the agency authority to develop rules to administer this provision.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Sponsor has prepared an amendment to conform this bill to its Senate companion.